IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7083 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPKUMAR BHAKTIRAM DANIDHARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7083 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('PBM Act' for short), the District Magistrate, Junagadh, vide order

dated July 8, 2001 detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that as per the report dated June 29, 2001 of the Police Sub-Inspector, Crime Branch, Junagadh, the jeep bearing registration No. GJ-E 5968 carrying two barrels - 400 litres of blue coloured kerosene was coming from Bilkha to Junagadh and the petitioner was sitting in it. As per the report of the Police Sub Inspector, the said kerosene was lifted from the fair price shop of Parbhatbhai Harijan. It was inspected by the police authority in presence of the panchas and the present petitioner. On investigation it was found that said 400 litres of kerosene was blue coloured kerosene which was meant for public distribution and there was breach of Blue Kerosene Restriction on Use and Fixation of Price Order, 1993 and hence it is seized. Thereafter on June 30, 2001 Parbatbhai Hadabhai Chavda was examined and it was found that there was irregularity in the distribution of the blue kerosene. The stock of 455 liters of kerosene worth Rs.3503.50 ps. was seized. As per the statement of the owner of the shop the 400 litres of blue kerosene was sold to the petitioner at Rs.2500 per barrel. The said stock was sold at Rs.5000 to the petitioner. The said stock of kerosene was lifted from the place of fair price shop in Jeep No. GJ-E 5968. It is admitted by the petitioner that the stock of blue kerosene was lifted in jeep No. GJ-E-5968. Thus it was found that the stock which was meant for the poor and weaker section of the society was not distributed to the ration card holders but was unauthorisedly disposed of for getting profit and thus the petitioner has indulged himself in the prejudicial activity. It was observed that the stock of blue kerosene was unauthorisedly disposed by the petitioner in higher rate in order to do the profiteering business and has thus indulged in blackmarketing activity and thereby the petitioner has indulged in prejudicial activities and committed offence under the Gujarat Essential Commodities Act, 1981 and, therefore, the petitioner is detained under Section 3 (2) of the PBM Act with a view to curb his activities.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus and/or a writ or a writ order or direction quashing and setting aside the impugned order of detention and to set the petitioner at liberty forthwith.

4. Ms. Subhadraben Patel, learned advocate for the

petitioner has raised the following contentions:

(i) There is a delay of more than four days in considering the representation made by the petitioner. According to her, the representation was made by the petitioner on August 13, 2001 which was received by the Deputy Secretary, State of Gujarat, on August 30, 2001 through the detaining authority. The said representation was decided on September 3, 2001 and, therefore, there is a delay of more than four days in considering the representation and hence, according to her, continued detention of the petitioner is required to be held illegal. Therefore, on the ground of delay, the continued detention has become unconstitutional.

(ii) The petitioner requested to forward the representation dated August 13, 2001 to the State Government as well as Central Government. However, the detaining authority has not forwarded the said representation to the Central Government and as the said request is not acceded to or the denial on the part of the detaining authority is illegal and violative of Article 22 (5) of the Constitution and, therefore, the continued detention should be held illegal.

(iii) Though the detaining authority has considered extraneous material in its order, it has not supplied the same to the detenu and therefore non-supply of the documents pari passu has also caused serious prejudice to the petitioner and it has infringed the right of the petitioner of making an effective representation and thereby constitutional safeguard enshrined in Article 22 (5) of the Constitution has been infringed.

(iv) Lastly, non-supply of the Control Orders, Circulars and Notifications which were referred to and relied upon by the detaining authority in the grounds of detention has caused serious prejudice to the petitioner in making effective representation which also has infringed the constitutional safeguard enshrined in Article 22 (5) of the Constitution.

On the aforesaid premise, learned advocate for the petitioner contended that continued detention of the petitioner has become illegal and, therefore, the impugned order of detention is liable to be quashed and

set aside by allowing the petition.

5. Mr. K.T. Dave, learned AGP for respondent Nos.1 to 3 has contested the petition by filing two separate reply affidavits one which is sworn by Sunaina Tomar, IAS, he District Magistrate, Junagadh - the detaining authority and the other by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. Similarly, Ms. P.J. Davawala, learned counsel for respondent No.4 has contested the petition by filing affidavit in reply sworn by S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

6. Mr. Dave, learned AGP has raised following contentions in reply to the contentions raised by Ms. Patel, learned advocate for the petitioner;

(i) In the facts and circumstances of the case, it cannot be said that there was delay in considering the representation. He contended that delay of four days has been properly explained by the Deputy Secretary, in para 5 of his affidavit in reply and therefore it cannot be said that there is delay in deciding the representation.

(ii) The request made by the petitioner to forward the representation to the Central Government is accepted by the State Government and the State Government in turn forwarded the same to the Central Government. It is immaterial whether the said representation is forwarded by the detaining authority or State Government. What is required to be seen is whether the said representation was forwarded to the Central Government or not. In view of the fact that the said representation has been sent to the Central Government by the State Government, petitioner's contention with respect to non-forwarding of the said representation to the Central Government by the detaining authority has no substance.

(ii) So far as non-supply of the extraneous material i.e., some ration cards, etc., is concerned, he contended that those documents are not relevant to the facts of the present petitioner but those documents might be relevant for the co-detenu from whose shop the said kerosene was allegedly

sold to the petitioner for the purpose of doing blackmarketing. As those documents are not relevant for the present petitioner, they are rightly not supplied to the petitioner.

(iv) So far as the contention with respect to the non-supply of the Control Order is concerned, according to the learned AGP it has no substance as those documents are relating to certain Control Orders, Circulars and Notifications which are very much available from the law books stalls or from Government library.

On the aforesaid premise, he submitted that there is no substance in the petition. He submitted that the order of detention is passed with a view to curb the blackmarketing activities of the petitioner as the activities carried on by the petitioner were prejudicial to the maintenance of supplies of the commodities essential to the community. He, therefore, urged to dismiss the petition.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition, documents annexed therewith, the impugned order of detention and the judgments cited at the bar.

8. On having perusal of the relevant papers, it is seen that the detaining authority did refer to and rely upon in para 2 of the grounds of detention the Licencing, Control, Stock Declaration Order 1981 and Restriction on Use and Fixation of Price Order, 1993 issued by the Central Government. The said Control Orders were not supplied to the detenu by the detaining authority. Admittedly, those documents are relevant for the purpose of making effective representation to the concerned authority and non-supply thereof has seriously prejudiced the constitutional safeguard enshrined in Article 22 (5) of the Constitution and thereby right of the petitioner of making an effective representation to the concerned authority has been infringed.

9. Mr. Dave, learned AGP contended that those documents are very much available from the law books stalls or from the Government library, therefore, it is not obligatory on the part of the detaining authority to supply those documents. To canvass the proposition that the documents like Control Orders, etc., which are available in legal literature, the detaining authority is not duty bound to supply those documents, he cited the

judgment of the Supreme Court in the case of Smt. Hemlata Kantilal Shah v. State of Maharashtra and another, AIR 1982 SC 8 wherein the Supreme Court has observed as under:

> "Whether or not the import of Palladium is prohibited or not is an information on a question of law and can be obtained from Statutes, Rules or Notifications. The Government is not under any liability to furnish the detenu with legal information available from legal literature. The liability of the detaining authority is only to comply with the requirements of Article 22 (5) of the Constitution. In the instant case, the detenu stated in his statement that he had purchased the palladium from the shop of a dealer in precious metal at Muscat and that he had smuggled that metal to make profits. Though palladium may not be a prohibited article it is admittedly a dutiable article and it was admittedly smuggled by the detenu."

10. It may be appreciated that the Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

11. Similar view is expressed by this Court in the case of Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar, 2000 (2) GLH 540.

12. In view of the above mentioned two judgments of the Supreme Court, non-supply of the documents pari passu is violative of Article 22 (5) of the Constitution as it adversely affected the right of the petitioner of making an effective representation before the authority concerned.

13. Now the question which falls for consideration is as to whether the detaining authority is duty bound to

supply to the detenu the copies of the documents like Control Orders which have been referred to and relied upon by the detaining authority in the grounds of detention? It is true that the detaining authority is not duty bound to supply the copies of the Essential Commodities Act or PBM Act which are easily available in the law books stalls or Government library. So far as the documents like Control Orders, Licencing, Control, Stock Declaration Order, Fixation of Price Order 1993, etc., are concerned, they are normally not available in law books stalls. It is available only with the Government and, therefore, in my view the detaining authority is duty bound to supply to the detenu the copies of those Control Orders, Notification, Circulars, etc., which have been referred to and relied upon by it in the grounds of detention. It may be noted that many a times the aforesaid Control, Licencing, Orders are not available with lawyers and even in the library because Government is issuing those Orders/Circulars from time to time as per the requirement of the Government machinery. Therefore, in my view, the detaining authority is bound to supply those documents, that is, Control Orders which have been referred to and relied upon by it in the grounds of detention.

14. In view of the discussion made in earlier paragraph, I am of the opinion that the judgment of the Supreme Court in Smt. Hemlata's case (supra) relied upon by the learned AGP is not applicable to the facts of the present case as in the said judgment the Supreme Court has held that whether or not the import of Palladium is prohibited or not is an information on a question of law and can be obtained from Statutes, Rules or Notifications. The Government is not under any liability to furnish the detenu with legal information available from legal literature and the liability of the detaining authority is only to comply with the requirements of Article 22 (5) of the Constitution. On the facts and in the circumstances emerging from the record of the case and in view of the observations made in para 13 above, I am of the opinion that the ratio laid down in the judgment in Mohd. Zakir's case (supra) and Koli Sureshbhai's case (supra) is squarely applicable to the facts of the present case and, therefore, non-supply of the documents, that is, Control Orders, has caused serious prejudge to the right of the detenu of making effective representation to the concerned authority and infirmity in this regard is violative of the constitutional safeguard enshrined in Article 22 (5) of the Constitution and on this sole ground the continued detention of the petitioner has become illegal and is vitiated and hence

the same is required to be quashed and set aside by allowing the petition.

15. In view of the fact that the present petition requires to be allowed on the above mentioned sole ground, other contentions advanced by the learned advocates appearing for the parties are not discussed.

16. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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